

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016010654

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On February 11, 2016, Student filed an Amended Request for Due Process Hearing (Amended Complaint) with the Office of Administrative Hearings, naming Long Beach Unified School District.

On March 9, 2016, District filed a motion to dismiss with prejudice (Motion) with the Office of Administrative Hearings.

On March 14, 2016, Student filed an opposition.

APPLICABLE LAW

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

This limited jurisdiction does not include jurisdiction over claims alleging a school district’s failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district’s alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The Ninth Circuit Court of Appeals held in *Wyner* that “the proper avenue to enforce SEHO orders” was the California Department of Education’s compliance

complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that “a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to “merely a breach” of the mediated settlement agreement that should be addressed by the California Department of Education’s compliance complaint procedure.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be “reasonably susceptible” to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

DISCUSSION

Student raises two claims against District in her Amended Complaint, as follows: (1) failure to offer appropriate transportation in the July 24, 2015 individualized education program; and (2) failure to offer appropriate speech and language therapy in the July 24, 2015 IEP.

District’s Motion requests that Student’s Amended Complaint be dismissed with prejudice because Student allegedly agreed that the placement and services provided in a July 11, 2013 settlement agreement constituted a free appropriate public education for Student during the 2015-2016 school year. District attached a copy of the settlement agreement to its Motion. Student’s Amended Complaint does not mention the July 11, 2013 settlement agreement, but her opposition to District’s Motion does not dispute the accuracy of the copy of the settlement agreement District provided.

Student’s Amended Complaint does not allege that District violated the settlement agreement; rather, District’s defense to Student’s Amended Complaint is the contention that Student’s Amended Complaint is barred by the July 11, 2013 settlement agreement. District

interprets Paragraph 9 of Attachment A of the July 11, 2013 settlement agreement as, in effect, a prospective waiver of claims regarding the 2015-2016 school year.

Student opposes District's Motion and argues the fact that she agreed, almost three years ago, that the stay put educational program identified in the settlement agreement constituted a FAPE does not bar her from contesting subsequent IEP offers, and that such a result is abhorrent to the requirement of the IDEA that disabled students be offered a FAPE on an annual basis.

Student's Amended Complaint does not allege District denied Student a FAPE as a result of a violation of a mediated settlement agreement, or that District "merely [] breach[ed]" a mediated settlement agreement. Therefore, this case cannot be dismissed on the basis of the rule or practice against OAH hearing cases involving disputes about a district's alleged failure to comply with a settlement agreement.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, District's Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits regarding interpretation of the settlement agreement, which is a triable issue for hearing. Accordingly, the motion is denied.

ORDER

District's Motion to Dismiss is denied. All dates currently set in this matter are confirmed.

DATE: March 21, 2016

DocuSigned by:
Kara Hatfield
8085C9417D1C4CF...

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings